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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-1948

MICHAEL JOSEPH KLAK
1328 Yale Avenue
Stockton, CA 95203

A C C U S A T I O N

Respiratory Care Practitioner License No. 9835

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about October 7, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 9835 to Michael Joseph Klak (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are

to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“(f) Negligence in his or her practice as a respiratory care practitioner.

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

7. Section 3755 of the Code states:

“The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision of Section 3750. The board may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner.”

COST RECOVERY

8. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the

1 board or the administrative law judge may direct any practitioner or applicant found to have committed
2 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and
3 prosecution of the case."

4 9. Section 3753.7 of the Code states:

5 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
6 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,
7 and service fees."

8 10. Section 3753.1 of the Code states:

9 "(a) An administrative disciplinary decision imposing terms of probation may include,
10 among other things, a requirement that the licensee-probationer pay the monetary costs associated with
11 monitoring the probation. "

12 FIRST CAUSE FOR DISCIPLINE

13 (Negligence)

14 11. Respondent is subject to disciplinary action under sections 3750(f)
15 [negligence], 3750(g) [any section], 3755 [unprofessional conduct] in that he failed to provide
16 ordered treatments for two patients. The circumstances are as follows:

17 PATIENT J.W.

18 12. On or about January 26, 2003, respondent was employed as a respiratory
19 therapist at St. Joseph's Medical Center, San Jose, California in the Emergency Department. On
20 that date, he acted as a relief supervisor. On January 26, 2003 at 1750 hours (5:50 p.m.), J.W.
21 walked into the Rapid Care area of the Emergency Department with a complaint of congestion and
22 cough for two weeks. He was diagnosed with bronchitis, and his condition was determined as
23 minor for prioritization on a scale of urgent/routine/minor.

24 13. At 1752 hours (5:52 p.m.), a chest x-ray was ordered, and a breathing
25 treatment of Albuterol 2.5 mg via hand held nebulizer. Respondent was the respiratory therapist
26 assigned to the area that night, but he did not treat J.W. and he did not chart that he did not treat the
27 patient. At 1900 hours (7:00 p.m.), the night shift respiratory therapist K.C. delivered the treatment
28 to J.W. At 1955 hours (7:55 p.m.), J.W. was discharged.

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3. Taking such other and further action as deemed necessary and proper.

DATED: September 21, 2004

Original signed by Liane Zimmerman for: _____
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant